IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 440 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any JJJJJ : NO

JJJJJ

#. By means of filing this petition under Article 227 of the Constitutioin of India, the petitioner Deputy Conservator of Forest, Valsad (North) Valsad, has brought under challenge the judgment and order dated January 31,1998 recorded in Criminal Appeal No. 32 of 1995 by the learned Sessions Judge, Valsad at Navsari by which the learned Sessions Judge has allowed the appeal in part filed by the respondent herein and quashed and set aside the order recorded by the Deputy Conservator of Forest, Valsad (North), Valsad confiscating the Tempo bearing registration No. GRV/7364 belonging to the respondent and substituted it by imposing the penalty of Rs.30,000.

#. It was the case of the petitioner that on basis of the prior information received on March 20,1994 by the Deputy Conservator of Forest, Hanmatmal's Range, that the Tempo bearing Registration No.GRV/7364 was involved in transporting of Teak sizes (materials) from the village Mohpada Falia. The staff, thereafter, kept the watch and patrolled the area during night hours on March 20,1994 and March 22,1994.

#. In the meantime, the said vehicle had left Dharampur in the evening of March 20,1994 with the driver Naimuddin Nasruddin Kadri. Two more persons Raising Lakhu of Sherimal (Bilpudi) and Shri Kanaiyalal Champalal Sharma, the brother-in-law of the Tempo owner Ghevarchand Krishnaji Sharma of Dharampur occupied seats therein and went inside the forest area of Dharampur and Hanmatlal range and during said night loaded 96 pieces of teak wood from forest area and on seeing the presence of forest staff the driver and the persons sitting therein immediately unloaded the teak wood and ran away from the scene and came to Dharampur.

#. The patrolling staff chased the said vehicle and took the possession of the said Tempo and brought to the Range Forest Office along with the driver and one Kanaiyalal Sharma. On inquiry, they have accepted the fact that they had gone to the forest with a view to taking away the teak wood and loaded the said teak wood in the Tempo and also unloaded the same at the place which was also shown by both of them.

#.On the basis of the aforesaid information, the Range Forest Officer went to the place where the teak wood was loaded. He took the possession of the teak wood along with the Tempo and seized after drawing panchnama, and thereafter recorded the statements of various persons who were responsible in commission of the forest offence.

During inquiry, it was revealed that the said Tempo was used in commission of the offence under the Indian Forest Act, hence, the procedure for confiscation was initiated.

#. After initiating the proceedings for confiscation of the said Tempo, a notice came to be served upon Dhevarchand i.e. original owner, who failed to remain present before the Deputy Conservator of Forest except on 13.02.1995 and failed to bring the witness and failed to produce documents showing ownership of the Tempo and delayed the proceedings. On appreciation of the statements of various witnesses including driver, Kanaiyalal and the owner of the tempo and the panchnama, the Deputy Conservator of Forest came to the conclusion that the owner had undertaken the trip through his Agent, and therefore, he was very much aware about the day to day working of the tempo driven by his driver and also did not co-operate in the inquiry to decide the case, and therefore, there were reasons to believe that the said tempo was used in the commission of the forest offence. The Deputy Conversator of Forest vide order dated May 9,1995 confiscated the said Tempo in exercise of powers conferred under section 61A(2) of the Indian Forest Act,1926 as amended by Gujarat Amendment Act,1983 (for short 'Act').

#. Aggrieved thereby the respondent-owner of the Tempo preferred appeal before the Sessions Court, Valsad at Navsari under the provisions of section 61D of the Act. The learned Sessions Judge on reappreciation of the papers of investigation and submission advanced at the Bar by the learned Advocate for the petitioner came to the conclusion that the said Tempo was used in illegal transportation of the teak wood which was cut from the forest area without any pass or permit, therefore, the forest offence did take place. However, in exercise of power 61D of the Act, the order of confiscation was quashed and set aside by imposing penalty of Rs.30,000/and ordered to hand over possession of the said Tempo on being deposited penalty of Rs.30,000/-, failing which the order of confiscation would stand. It is this order, recorded by the learned Sessions Judge in exercise of powers conferred under section 61D of the Act, which has given rise to this Special Criminal Application at the instance of the petitioner i.e. Deputy Conservator of Forest.

#. I have heard Mr.V.M.Pancholai, lerned APP for the petitioner and Mr.Sauran Shah, learned Advocate for the respondent.

#. The only question which calls for determination in this petition under Articles 227 of the Constitution of India, is as to whether the Sessions Judge has power under section 61D of the Act to modify the order of confiscation of the vehicle which was used in commission of the forest offence passed by Deputy Conservator of Forest in exercise of powers conferred under section 61A of the Act, by imposing penalty of Rs.30,000/-.

##. To answer the aforesaid question posed for determination, it would be advantageous to refer the provision contained in sections 61A and 61D of the Act, which reads as under :

"61A.Confiscation by Forest Officers in certain cases :-

(1) XXX XXX XXX XXX

(2) Where the authorised officer seizes under sub-sec.(1) of Sec.52 any forest produce which is the property of the State Government or where any such property is produced before the authorised officer under sub.sec.(1) and he is satisfied that a forest offence is committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commissions of such forest offence, order confiscation of the property so seized together with all tools, ropes chains, boats, vehicles and cattle used in committing such offence.

(3) XXX XXX XXX XXX

61D Appeal :- (1) Any person aggrieved by any order passed under Sec.61A or Sec.61C may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity of being heard to the appellant and the authorised officer or the officer specially empowered under Sec.61C as the case may be, pass such order as he may think fit confirming, modifying or annulling the order appealed against".

On having perusal of the aforesaid statutory provisions of the Act, it is seen that the authorised officer namely, the Deputy Conservator of Forest, "may" order confiscation of the property seized together with the vehicle used in committing such offence. The statute

has used the word "may". While passing the order, the authorised officer has to take into consideration all relevant facts like value of the forest produce as well as vehicle and the background and the mode in which the offence was committed. He has also to take into account as to whether the said vehicle was used in commission of the offence in past or used frequently. After recording the conclusion, he has to pass the order of confiscation of the goods as well as the vehicle.

##. The legislation in its wisdom has not used the word "shall". While passing the order, the Forest Officer has also to take into account that the order should not be so harsh or disproportionate to the guilt. Therefore, if the Deputy Conservator of Forest fails to exercise that power properly or used the power capriciously, arbitrarily, the legislation in its wisdom has provided the provision of appeal under section 61D of the Act, whereby, the Sessions Judge is empowered to confirm, modify or annull the order of the authorised officer. If the confiscation by authorised officer is compulsory under the relevant provisions of law, the legislature would not have provided power to modify the order under the provision of appeal against such order. To put it differently, power given to the authorised officer under the statute is subject to appeal before the judicial Court which would have a similar power to examine all the relevant facts and thereupon to confirm or modify or annul the order of the authorised officer.

##. In view of the aforesaid discussions, I am of the opinion that the Sessions Judge while exercising powers under section 61D of the Act, has power to modify the order of confiscation of the vehicle used in commission of the offence passed by the Deputy Conservator of Forest.

##. In the backdrop of the aforesaid statutory provisions of law, if we examine the case on hand, it could be assembled from the impugned order recorded by the learned Sessions Judge, Valsad at Navsari that the price of the Tempo confiscated by Deputy Conservator of Forest is much higher than the teak wood which was cut illegally from the forest area and transported therein. Therefore, the learned Sessions Judge, in her wisdom substituted the order of confiscation by imposing penalty of Rs.30,000/- which according to her would meet the ends of justice. I do not find any infirmities or illegalities in the impugned order passed by the learned Sessions Judge as it is in consonance with the statutory provisions of the Act envisaged under Section 61D of the

Act, which would warrant interference in the petition filed under Article 227 of the Constitution.

##. For the foregoing reasons, the petition fails and is accordingly rejected. Rule is discharged.

m.m.bhatt